



S P I R O C O  
EXPLORING YOUR FUTURE

SPIROCO | Karlheinz Moll | Abbachstraße 35 | 80992 Munich | Germany

February 09, 2011

Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
10th St and Pennsylvania Avenue, N.W.  
Washington, DC 20530

Stephen E. Shay  
Deputy Assistant Secretary for International  
Affairs  
United States Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Manal Corwin  
International Tax Counsel  
United States Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

**Re: Request for publication date of FATCA regulations**

Dear Ms. Corwin and Messrs. Shulman and Shay:

I am writing to you in the capacity of a business consultancy in Germany currently providing Foreign Account Tax Compliance Act ('FATCA') related advice to many large Foreign Financial Institutions ('FFIs') in Europe. In the last couple of months, many FFIs were in the process of hiring FATCA compliance staff, setting-up working groups, producing impact studies and considering strategic options regarding FATCA compliance. However all these initiatives basically came to a halt as FFIs are unable to act any further without clear guidance and regulations from the IRS.

Before the 23<sup>rd</sup> Annual Institute on Current Issues in International Taxation in Washington, DC held last year on December 9 Commissioner Doug Shulman called FATCA 'the most important development in international information reporting in a generation' making it very clear that the implementation of FATCA will strongly alter current processes and procedures applied under the Qualified Intermediary ('QI') regime a decade ago and other global or local financial rules and regulations. An initiative like this will take FFIs a minimum of 18 months to implement and to be compliant by January 1, 2013.

FFIs are receiving conflicting information from sources within or close to the IRS regarding the date these regulations will be published. Some state that regulations shall be expected at the end of the 1<sup>st</sup> Quarter of 2011, others mention that regulations might not come before summer 2011. Therefore I am recommending that the United States Department of Treasury publishes a reliable and firm date as to when these regulations can be expected.



FFIs will have to undertake major steps to make changes to existing client documentation, adapt new operational processes and to implement information technology systems. The most sensitive and cost intensive initiatives will be those related to information technology. Modifications and new investments regarding information technology include new or enhanced systems that are able to fulfill FATCA requirements. Among these are:

- Identify covered securities and calculate the cost basis under U.S. tax according to final regulations RIN 1545-B166
- Identify grandfathered obligations as defined of section 501(d)(2) of the Act
- Apply electronic search criteria to determine potential U.S. status for existing and new accounts (IRS Notice 2010-60 Part III.B.2.a., Step 3, and III.B.2.b., Step 4)
- Implement electronically searchable information for preexisting accounts and entities (IRS Notice 2010-60 Parts III.B.2.a., Step 5 and III.B.3.a.)
- Compute the average account balance regarding the USD 50,000 threshold (IRS Notice 2010-60: Part III.B.2.a.1, and III.B.2.b.1)
- Implement data collection and aggregation to meet FATCA reporting requirements

The efforts required to be fully compliant with FATCA regulations will vary in each country depending on existing rules and regulations in a jurisdiction. The financial service industry in Europe estimates average implementation costs of USD 10 Mio. per FFIs. The implementation of an initiative like FATCA will FFIs have to execute strategic and business decisions, need to hire additional resources, train existing and new staff and very importantly estimate, approve and make available budgets for the operational and technical implementation of FATCA. The financial and human resources need to be available at the time the implementation activities will be commenced.

The global financial community, FFIs, the many financial service associations, audit companies and consultancies that provided comments on Notice 2010-60 are eagerly awaiting your guidance and regulations. **Please provide advice when these regulations will be made public by the IRS enabling the financial services industry to be compliant by January 1, 2013.**

Yours sincerely,

Karlheinz Moll

SPIROCO Consulting  
Abbachstrasse 35  
D-80992 Munich  
Germany  
E-Mail: [karlheinz.moll@spi-roco-consulting.com](mailto:karlheinz.moll@spi-roco-consulting.com)